

## Railroad Retirement Board

## § 322.3

consideration of services and if such services were in turn rendered in consideration of the income payable or accruing.

(2) Remuneration includes income in the form of a commodity, service, or privilege if, before the performance of the service for which it is payment, the parties have agreed upon the value of such commodity, service, or privilege, and that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege.

(3) Remuneration for a working day that includes a part of two consecutive calendar days is deemed to have been earned on the first of such two days.

(b) *Subsidiary remuneration.* For the purpose of this part, remuneration does not include subsidiary remuneration, as defined in §322.9. Subsidiary remuneration for any day does not prevent such day from being a day of unemployment or a day of sickness, except as explained in §322.9.

(c) *Supplemental unemployment or sickness benefits.* The term remuneration does not include money payments received by an employee pursuant to any nongovernmental plan for unemployment or sickness insurance, as defined in part 323 of this chapter. Employer payments of sick pay to an employee are remuneration, except when payment is made pursuant to a nongovernmental plan for sickness insurance.

[65 FR 14459, Mar. 17, 2000]

EFFECTIVE DATE NOTE: At 65 FR 14459, Mar. 17, 2000, §322.2 was revised, effective Apr. 17, 2000. For the convenience of the user, the superseded text follows.

### § 322.2 General definition of “remuneration”.

*Remuneration* includes all pay for services for hire and all other earned income payable or accruing with respect to any day. Income shall be deemed earned if it is payable or accrues in consideration of services and if such services were in turn rendered in consideration of the income payable or accruing. “Remuneration” shall include income in the form of a commodity, service, or privilege if, before the performance of the service for which it is payment, the parties have agreed (a) upon the value of such commodity, service, or privilege, and (b) that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege.

### § 322.3 Determining the days with respect to which remuneration is payable or accrues.

(a) *Payable or accrues.* In determining whether remuneration is “payable” or “accrues” to an employee with respect to a claimed day or days, consideration shall be given to such factors as

(1) The intention of the parties with respect to the remuneration as indicated in employment contracts, in any expressed or implied agreements between the parties, and by the actions of the parties;

(2) Any evidence, such as vouchers or agreement of the parties, relating the remuneration to a particular period of time or indicating that the remuneration accrued or became payable without reference to any particular period of time;

(3) The measure by which the amount of remuneration was determined;

(4) Whether the amount of the remuneration is proportionate to the length of time needed to render the service for which it is payment;

(5) Whether the service for which the remuneration accrues is required to be rendered on any particular day or particular days; and

(6) Whether a specified amount of the remuneration is contingent upon a result accomplished on a particular day or particular days.

(b) *Layover days.* Remuneration shall not be regarded as payable or accruing to an employee with respect to his or her “layover” days between regular assignments in train and engine service solely because they are termed “layover” days. But no such “layover” day may be considered as a day of unemployment or sickness. See §332.6 of this chapter.

(c) *Guaranteed earnings.* A payment under a plan which guarantees an amount of earnings or mileage in a specified period is remuneration with respect to each day in the specified period.

(d) *Equivalent of full-time work.* An employee who works fewer than five days each week under a compressed work schedule that provides the equivalent of full-time employment does not earn remuneration with respect to his or her additional rest days resulting

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from such work schedule, but such employee will not be considered to be available for work on such rest days. See § 327.10(d) of this chapter.

[Board Order 59-73, 24 FR 2487, Mar. 31, 1959, as amended at 65 FR 14460, Mar. 17, 2000]

EFFECTIVE DATE NOTE: At 65 FR 11460, Mar. 17, 2000, § 322.3 was amended by revising paragraph (b) and by adding a new paragraph (d), effective Apr. 17, 2000. For the convenience of the user, the superseded text follows.

### § 322.3 Determining the days with respect to which remuneration is payable or accrues.

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(b) *Layover days.* Remuneration shall not be regarded as payable or accruing with respect to "layover" days, solely because they are termed "layover" days.

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### § 322.4 Consideration of evidence.

(a) *Initial proof.* A claimant's certification that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost for any such day shall constitute sufficient evidence for an initial finding that no remuneration is payable or has accrued to him or her with respect to such day, unless a base year employer reports that he or she worked on days claimed or received payments that constitute remuneration as defined in this part, or unless there is other conflicting evidence.

(b) *Investigation.* When there is a question as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

(Approved by the Office of Management and Budget under control number 3220-0049)

[Board Order 59-73, 24, 2487, Mar. 31, 1959, as amended at 52 FR 11017, Apr. 6, 1987; 65 FR 14460, Mar. 17, 2000]

EFFECTIVE DATE NOTE: At 65 FR 14460, Mar. 17, 2000, § 322.4 was amended by revising paragraph (a), effective Apr. 17, 2000. For the convenience of the user, the superseded text follows.

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### § 322.4 Consideration of evidence.

(a) *Initial proof.* A claimant's certification or statement on a claim form provided by the Board to the effect that he did not work on any day claimed and did not receive income such as vacation pay or pay for time lost for any day claimed on such form shall constitute sufficient evidence that no remuneration is payable or has accrued to him with respect to such day, unless there is conflicting evidence.

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### § 322.5 Payments under vacation agreements.

(a) *General.* In ascertaining the accrual of remuneration under a vacation agreement, consideration shall be given to the applicable agreements and practices, the interpretations of such agreements and practices developed by the parties, and the actions of the parties pursuant thereto. When there is information that an employee has received or is to receive payment under a vacation agreement, such payment shall, in the absence of evidence to the contrary, be considered to be remuneration with respect to the days to which the payment is assigned.

(b) *Vacation pay.* If an employee takes a vacation in accordance with a vacation agreement, the payment for such vacation shall constitute remuneration with respect to the days in the vacation period for which the payment is made. An employee shall be regarded as taking a vacation when, in accordance with the applicable agreements and practices (1) he is absent from work during a scheduled or assigned vacation period; (2) he is required to take his vacation with pay while he is on furlough; or (3) he chooses to take his vacation with pay while he is unemployed or absent from work due to illness or other personal circumstances.

(c) *Pay in lieu of vacation.* If a payment in lieu of vacation is made to an employee under a vacation agreement such payment shall not constitute remuneration with respect to any particular day or days. A payment under a vacation agreement shall be regarded as in lieu of vacation if:

(1) The payment is made at the end of the vacation year to an employee who